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HOUSE BILL 227

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

RELATING TO PUBLIC SAFETY; CREATING THE HOMELAND SECURITY AND
EMERGENCY MANAGEMENT DEPARTMENT; PROVIDING POWERS AND DUTIES;
CHANGING THE SHORT TITLES OF CERTAIN ACTS; MAKING AN
APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 6 of this act may be cited as the "Homeland Security
and Emergency Management Department Act".

Section 2. [NEW MATERIAL] PURPOSE.--The purpose of the
Homeland Security and Emergency Management Department Act is to
establish a department to:

A. consolidate and coordinate homeland security and
emergency management functions to provide comprehensive and
coordinated preparedness, mitigation, prevention, protection,

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1 response and recovery for emergencies and disasters, regardless
2 of cause, and acts of terrorism;

3 B. act as the central primary coordinating agency
4 for the state and its political subdivisions in response to
5 emergencies, disasters and acts of terrorism; and

6 C. act as the conduit for federal assistance and
7 cooperation in response to emergencies, disasters and acts of
8 terrorism.

9 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
10 Homeland Security and Emergency Management Department Act:

11 A. "department" means the homeland security and
12 emergency management department; and

13 B. "state director" means the state director of
14 homeland security and emergency management.

15 Section 4. [NEW MATERIAL] HOMELAND SECURITY AND EMERGENCY
16 MANAGEMENT DEPARTMENT--CREATED--POWERS AND DUTIES.--

17 A. The "homeland security and emergency management
18 department" is created in the executive branch. The department
19 is not a cabinet department. The chief administrative and
20 executive officer of the department is the "state director of
21 homeland security and emergency management", who shall be
22 appointed by the governor and hold office at the pleasure of
23 the governor.

24 B. The state director is responsible to the
25 governor for the operation of the department. It is the state

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1 director's duty to manage all operations of the department and
2 to administer and enforce the laws with which the state
3 director or the department is charged.

4 C. To perform the state director's duties, the
5 state director has every power expressly enumerated in the
6 laws, whether granted to the state director or the department
7 or any division of the department, except where authority
8 conferred upon any division is explicitly exempted from the
9 state director's authority by statute. In accordance with
10 these provisions, the state director shall:

11 (1) except as otherwise provided in the
12 Homeland Security and Emergency Management Department Act,
13 exercise general supervisory and appointing authority over all
14 department employees, subject to any applicable personnel laws
15 and rules;

16 (2) delegate authority to subordinates as the
17 state director deems necessary and appropriate, clearly
18 delineating such delegated authority and the limitations
19 thereto;

20 (3) organize the department into those
21 organizational units the state director deems will enable it to
22 function most efficiently, subject to any provisions of law
23 requiring or establishing specific organizational units;

24 (4) within the limitations of available
25 appropriations and applicable laws, employ and fix the

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1 compensation of those persons necessary to discharge the state
2 director's duties;

3 (5) take administrative action by issuing
4 orders and instructions, not inconsistent with the law, to
5 ensure implementation of and compliance with the provisions of
6 law for whose administration or execution the state director is
7 responsible and to enforce those orders and instructions by
8 appropriate administrative action or actions in the courts;

9 (6) conduct research and studies that will
10 improve the operations of the department and the provision of
11 services to the residents of the state;

12 (7) provide courses of instruction and
13 practical training for employees of the department and other
14 persons involved in the administration of programs, with the
15 objective of improving the operations and efficiency of
16 administration;

17 (8) prepare an annual budget of the
18 department;

19 (9) provide cooperation, at the request of
20 heads of administratively attached agencies, in order to:

21 (a) minimize or eliminate duplication of
22 services and jurisdictional conflicts;

23 (b) coordinate activities and resolve
24 problems of mutual concern; and

25 (c) resolve by agreement the manner and

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1 extent to which the department shall provide budgeting, record-
2 keeping and related clerical assistance to administratively
3 attached agencies; and

4 (10) appoint, with the governor's consent, a
5 "director" for each division. These appointed positions are
6 exempt from the provisions of the Personnel Act. Persons
7 appointed to these positions shall serve at the pleasure of the
8 state director.

9 D. The state director may apply for and receive,
10 with the governor's approval, in the name of the department any
11 public or private funds, including United States government
12 funds, available to the department to carry out its programs,
13 duties or services.

14 E. The state director may make and adopt such
15 reasonable and procedural rules as may be necessary to carry
16 out the duties of the department and its divisions. No rule
17 promulgated by the director of any division in carrying out the
18 functions and duties of the division shall be effective until
19 approved by the state director, unless otherwise provided by
20 statute. Unless otherwise provided by statute, no rule
21 affecting any person or agency outside the department shall be
22 adopted, amended or repealed without a public hearing on the
23 proposed action before the state director or a hearing officer
24 designated by the state director. The public hearing shall be
25 held in Santa Fe unless otherwise permitted by statute. Notice

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1 of the subject matter of the rule, the action proposed to be
2 taken, the time and place of the hearing, the manner in which
3 interested persons may present their views and the method by
4 which copies of the proposed rule, proposed amendment or repeal
5 of an existing rule may be obtained shall be published once at
6 least thirty days prior to the hearing date in a newspaper of
7 general circulation and mailed at least thirty days prior to
8 the hearing date to all persons who have made a written request
9 for advance notice of hearing. All rules shall be filed in
10 accordance with the State Rules Act.

11 Section 5. [NEW MATERIAL] DEPARTMENT DUTIES.--The
12 department shall:

13 A. coordinate the homeland security and emergency
14 management efforts of all state and local government agencies,
15 as well as enlist cooperation from private entities such as
16 health care providers;

17 B. apply for and accept federal funds for homeland
18 security, administer the funds and develop criteria to allocate
19 grants to local governments, tribes, state agencies and other
20 qualified entities;

21 C. act as liaison between federal, state and local
22 agencies to effect the improved sharing of counterterrorism
23 intelligence;

24 D. provide information to the general public and to
25 private businesses that is essential to ensuring their safety

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1 and security and provide the governor with timely information
2 relating to emergencies, disasters and acts of terrorism or
3 terrorist threats;

4 E. establish security standards for state
5 facilities and for protection of their occupants and develop
6 plans for the continuity of state government operations in the
7 event of a threat or act of terrorism or other natural or
8 man-made disaster;

9 F. identify the state's critical infrastructures
10 and assist public and private entities with developing plans
11 and procedures designed to implement the protective actions
12 necessary to continue operations;

13 G. coordinate state agency and local government
14 plans for prevention, preparedness and response with a focus on
15 an all-hazards approach;

16 H. coordinate law enforcement counterterrorism
17 prevention, preparedness and response training on a statewide
18 basis, including training for emergency responders, government
19 officials, health care providers and others as appropriate;

20 I. work with emergency response and emergency
21 management programs and provide assistance in developing and
22 conducting terrorism response exercises for emergency
23 responders, government officials, health care providers and
24 others;

25 J. coordinate law enforcement's and emergency

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1 responders' response to an act of terrorism or terrorist
2 threat;

3 K. develop and maintain a statewide plan and
4 strategy to manage and allocate federal grant funds required to
5 provide the state's emergency response community with the
6 equipment necessary to respond to an act of terrorism involving
7 a weapon of mass destruction; and

8 L. perform such other duties relating to homeland
9 security as may be assigned by the governor.

10 Section 6. [NEW MATERIAL] COOPERATION WITH FEDERAL
11 GOVERNMENT--AUTHORITY OF STATE DIRECTOR--SINGLE STATE AGENCY
12 STATUS.--

13 A. The department is authorized to cooperate with
14 the federal government in the administration of homeland
15 security and emergency management programs in which financial
16 or other participation by the federal government is authorized
17 or mandated under state or federal laws, rules or orders. The
18 department may enter into agreements with agencies of the
19 federal government to implement homeland security and emergency
20 management programs subject to availability of appropriated
21 state funds and any provisions of state laws applicable to such
22 agreements or participation by the state.

23 B. The governor may by appropriate order designate
24 the department as the single state agency for the
25 administration of any homeland security or emergency management

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1 program when that designation is a condition of federal
2 financial or other participation in the program under
3 applicable federal law, rule or order. Whether or not a
4 federal condition exists, the governor may designate the
5 department as the single state agency for the administration of
6 any homeland security or emergency management program. No
7 designation of a single state agency under the authority
8 granted in this section shall be made in contravention of state
9 law.

10 Section 7. Section 9-19-4 NMSA 1978 (being Laws 1987,
11 Chapter 254, Section 4, as amended) is amended to read:

12 "9-19-4. DEPARTMENT ESTABLISHED.--There is created in the
13 executive branch the "department of public safety". The
14 department shall be a cabinet department and shall consist of,
15 but not be limited to, five program divisions, an
16 administrative division and an information technology division
17 as follows:

- 18 A. the New Mexico state police division;
- 19 B. the special investigations division;
- 20 C. the training and recruiting division;
- 21 D. the technical [~~and emergency~~] support division;
- 22 E. the administrative services division;
- 23 F. the motor transportation division; and
- 24 G. the information technology division."

25 Section 8. Section 9-19-7 NMSA 1978 (being Laws 1987,

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1 Chapter 254, Section 7, as amended) is amended to read:

2 "9-19-7. ORGANIZATIONAL UNITS OF DEPARTMENT--POWERS AND
3 DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--

4 A. The organizational units of the department and
5 the officers of those units specified by law shall have all the
6 powers and duties enumerated in the specific laws involved.
7 However, the carrying out of those powers and duties shall be
8 subject to the direction and supervision of the secretary, who
9 shall retain the final decision-making authority and
10 responsibility for the administration of any such laws as
11 provided in Subsection B of Section 9-19-6 NMSA 1978. The
12 department shall have access to all records, data and
13 information of other state departments, agencies and
14 institutions, including its own organizational units, not
15 specifically held confidential by law.

16 B. The New Mexico state police division shall
17 consist of the commissioned officers and civilian personnel,
18 including all communications equipment operators, of the New
19 Mexico state police uniform division and the commissioned
20 officers and civilian personnel of the New Mexico state police
21 criminal division and such other personnel as may be assigned
22 by the secretary or by the governor pursuant to an executive
23 order as authorized in the Department of Public Safety Act.

24 C. The special investigations division shall
25 consist of the staff of the governor's organized crime

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1 prevention commission, the enforcement personnel of the
2 department of alcoholic beverage control and such other
3 personnel as may be assigned by the secretary or by the
4 governor pursuant to an executive order as authorized in the
5 Department of Public Safety Act. The division is responsible
6 for the enforcement of the Bingo and Raffle Act and the Liquor
7 Control Act.

8 D. The technical [~~and emergency~~] support division
9 shall consist of [~~the emergency planning and coordination~~
10 ~~bureau of the department of public safety, the personnel of the~~
11 ~~hazardous materials emergency response program or plan and such~~
12 ~~other~~] functions such as communications, crime laboratory and
13 records.

14 E. The training and recruiting division shall
15 consist of the personnel of the New Mexico law enforcement
16 academy, the New Mexico state police training division and all
17 other training personnel and functions of the department as the
18 secretary may transfer to this division.

19 F. The administrative services division shall
20 consist of the administrative services and services divisions
21 of the New Mexico state police and those administrative support
22 personnel of the other existing departments, divisions or
23 offices as the secretary deems necessary."

24 Section 9. Section 12-10-1 NMSA 1978 (being Laws 1959,
25 Chapter 190, Section 1, as amended) is amended to read:

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1 "12-10-1. SHORT TITLE.--Sections [~~9-13-15 through 9-13-17~~
2 ~~and 9-13-19 through 9-13-24 NMSA 1953]~~ 12-10-1 through 12-10-10
3 NMSA 1978 may be cited as the "[~~State Civil~~] All Hazard
4 Emergency [~~Preparedness~~] Management Act"."

5 Section 10. Section 12-10-2 NMSA 1978 (being Laws 1959,
6 Chapter 190, Section 2, as amended) is amended to read:

7 "12-10-2. PURPOSE.--The purpose of the [~~State Civil~~] All
8 Hazard Emergency [~~Preparedness~~] Management Act is to:

9 A. [~~to create the emergency planning and~~
10 ~~coordination bureau of the department of public safety and to]~~
11 authorize the creation of local offices of [~~civil emergency~~
12 ~~preparedness~~] emergency management in the political
13 subdivisions of the state;

14 B. [~~to~~] confer upon the governor and upon the
15 governing bodies of the state [~~civil~~] all hazard emergency
16 [~~preparedness~~] management powers;

17 C. [~~to~~] provide [~~a civil~~] an emergency
18 [~~preparedness~~] operations plan for the protection of life and
19 property adequate to cope with disasters resulting from acts of
20 war or sabotage or from natural or man-made causes other than
21 acts of war;

22 D. [~~to~~] provide for coordination of all [~~civil~~]
23 hazard emergency [~~preparedness~~] management functions of this
24 state with the comparable functions of the federal government
25 and other states and localities and of private agencies;

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1 E. [to] initiate programs to render aid in the
2 emergency restoration of facilities, utilities and other
3 installations essential to the safety and general welfare of
4 the public; and

5 F. [to] provide for assistance and care for persons
6 displaced, left homeless or otherwise victims of disaster or
7 war conditions."

8 Section 11. Section 12-10-3 NMSA 1978 (being Laws 1969,
9 Chapter 33, Section 1, as amended) is amended to read:

10 "12-10-3. EMERGENCY PLANNING AND COORDINATION [BUREAU].--
11 [~~A. There is created the "emergency planning and coordination~~
12 ~~bureau" of the department of public safety. B. The director of~~
13 ~~the technical and emergency support division of the department~~
14 ~~of public safety]~~ The state director of homeland security and
15 emergency management shall be responsible [~~to the secretary~~]
16 for carrying out the program for [~~civil~~] all hazard emergency
17 [~~preparedness~~] management authorized by law and shall serve as
18 the governor's authorized representative at the discretion of
19 the governor. The [~~emergency planning and coordination bureau~~
20 ~~chief~~] state director shall direct and coordinate the [~~civil~~]
21 all hazard emergency [~~preparedness~~] management activities of
22 all state departments, agencies and political subdivisions and
23 shall maintain liaison with and cooperate with [~~civil~~] all
24 hazard emergency [~~preparedness~~] management agencies and
25 organizations of other states and of the federal government."

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1 Section 12. Section 12-10-4 NMSA 1978 (being Laws 1959,
2 Chapter 190, Section 5, as amended) is amended to read:

3 "12-10-4. [~~CIVIL~~] ALL HAZARD EMERGENCY [~~PREPAREDNESS~~]
4 MANAGEMENT--POWERS OF THE GOVERNOR.--

5 A. The governor shall have general direction and
6 control of the activities of the [~~emergency planning and~~
7 ~~coordination bureau~~] homeland security and emergency management
8 department and shall be responsible for carrying out the
9 provisions of the [~~State Civil~~] All Hazard Emergency
10 [~~Preparedness~~] Management Act and, in the event of any man-made
11 or natural disaster causing or threatening widespread physical
12 or economic harm that is beyond local control and requiring the
13 resources of the state, shall exercise direction and control
14 over any and all state forces and resources engaged in
15 emergency operations or related [~~civil~~] all hazard emergency
16 [~~preparedness~~] management functions within the state.

17 B. In carrying out the provisions of the [~~State~~
18 ~~Civil~~] All Hazard Emergency [~~Preparedness~~] Management Act, the
19 governor is authorized to:

20 (1) cooperate with the federal government and
21 agree to carry out [~~civil~~] all hazard emergency [~~preparedness~~]
22 management responsibilities delegated in accordance with
23 existing federal laws and policies and cooperate with other
24 states and with private agencies in all matters relating to the
25 [~~civil~~] all hazard emergency [~~preparedness~~] management of the

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1 state and nation;

2 (2) issue, amend or rescind the necessary
3 orders, [~~regulations~~] rules and procedures to carry out the
4 provisions of the [~~State-Civil~~] All Hazard Emergency
5 [~~Preparedness~~] Management Act;

6 (3) provide those resources and services
7 necessary to avoid or minimize economic or physical harm until
8 a situation becomes stabilized and again under local self-
9 support and control, including the provision, on a temporary,
10 emergency basis, [~~for~~] of lodging, sheltering, health care,
11 food, [~~any~~] transportation or shipping necessary to protect
12 lives or public property; or for any other action necessary to
13 protect the public health, safety and welfare;

14 (4) prepare a comprehensive emergency
15 operations plan and program [~~for the civil emergency~~
16 ~~preparedness of the state~~] and to integrate the state emergency
17 operations plan and program with the [~~civil emergency~~
18 ~~preparedness~~] emergency operations plans and programs of the
19 federal government and other states and to coordinate the
20 preparation of emergency operations plans and programs [~~for~~
21 ~~civil emergency preparedness~~] by the political subdivisions of
22 this state;

23 (5) procure supplies and equipment, to
24 institute training programs and public information programs and
25 to take all necessary preparatory actions, including the

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1 partial or full mobilization of state and local government
2 forces and resources in advance of actual disaster, to ensure
3 the furnishing of adequately trained and equipped emergency
4 forces of government and auxiliary personnel to cope with
5 disasters resulting from enemy attack or other causes; and

6 (6) enter into mutual aid agreements with
7 other states and to coordinate mutual aid agreements between
8 political subdivisions of the state."

9 Section 13. Section 12-10-5 NMSA 1978 (being Laws 1959,
10 Chapter 190, Section 6, as amended) is amended to read:

11 "12-10-5. LOCAL [CIVIL] EMERGENCY [PREPAREDNESS]
12 MANAGEMENT.--The governing bodies of the political subdivisions
13 of the state are responsible for the [civil] all hazard
14 emergency [~~preparedness~~] management of their respective
15 jurisdictions. Each political subdivision is authorized to
16 establish, by ordinance or resolution, a local office of
17 [civil] emergency [~~preparedness~~] management as an agency of the
18 local government and responsible to the governing body, in
19 accordance with the state [civil] emergency [~~preparedness~~]
20 operations plan and program. Every local coordinator of
21 [civil] emergency [~~preparedness~~] management shall be appointed
22 by the governing body, subject to the approval of the state
23 director of homeland security and emergency management, and
24 [~~such~~] the local coordinator shall have direct responsibility
25 for carrying out the [civil] all hazard emergency

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1 [preparedness] management program of the political subdivision.
2 [He] The state director shall coordinate the [civil] emergency
3 [preparedness] management activities of all local governmental
4 departments and agencies and shall maintain liaison with and
5 cooperate with [civil-preparedness] emergency management
6 agencies and organizations of other political subdivisions and
7 of the state government. Each local organization shall perform
8 [civil] emergency [preparedness] management functions within
9 the territorial limits of the political subdivision within
10 which it is organized."

11 Section 14. Section 12-10-6 NMSA 1978 (being Laws 1959,
12 Chapter 190, Section 7, as amended) is amended to read:

13 "12-10-6. MUTUAL AID AGREEMENTS.--Each political
14 subdivision may, in cooperation with other public and private
15 agencies within the state, enter into mutual aid agreements for
16 reciprocal [civil] emergency [preparedness] management aid and
17 assistance. [Such] The agreements shall be consistent with the
18 state [civil] emergency [preparedness] operations plan, and in
19 time of emergency it shall be the duty of each local [civil]
20 emergency [preparedness] management organization to render
21 assistance within [their] its capabilities and in accordance
22 with the provisions of the program and plan promulgated by the
23 [~~civil emergency preparedness division~~] homeland security and
24 emergency management department."

25 Section 15. Section 12-10-7 NMSA 1978 (being Laws 1959,

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1 Chapter 190, Section 8, as amended) is amended to read:

2 "12-10-7. AUTHORITY TO MAKE APPROPRIATIONS AND ACCEPT
3 AID.--

4 A. Each political subdivision of the state shall
5 have the power to make appropriations in the manner prescribed
6 by law, and subject to the limitations of the law, for the
7 payment of expenses of [~~civil~~] emergency [~~preparedness~~]
8 management.

9 B. Whenever the federal government or any agency or
10 officer thereof shall offer to the state or any political
11 subdivision thereof services, equipment, supplies, materials or
12 funds by way of gift, grant or loan for purposes of [~~civil~~]
13 emergency [~~preparedness~~] management, the state, acting through
14 the governor, or the political subdivision, acting with the
15 consent of the governor, may accept the offer and may authorize
16 any officer of the state or of the political subdivision to
17 receive the aid and assistance.

18 C. Whenever any private person, firm or corporation
19 shall offer to the state or to any political subdivision
20 thereof any aid or assistance for [~~civil~~] emergency
21 [~~preparedness~~] management, the state or the political
22 subdivision shall be authorized to accept the aid or
23 assistance, subject to the provisions of this section."

24 Section 16. Section 12-10-8 NMSA 1978 (being Laws 1963,
25 Chapter 193, Section 1, as amended) is amended to read:

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1 "12-10-8. CIVIL LIABILITY--LIMITED.--Any person owning or
2 controlling real estate or other premises who voluntarily and
3 without compensation grants a license or privilege or otherwise
4 permits the designation or use of the whole or any part of
5 [~~his~~] the person's real estate or premises for the purpose of
6 sheltering persons during an actual or impending enemy attack
7 or other disaster shall, together with [~~his~~] the person's
8 successors in interest, if any, not be civilly liable for
9 negligently causing the death of or injury to any person on or
10 about the real estate or premises or for the loss of or damage
11 to the property of such person, providing [~~said~~] the premises
12 have been approved either in whole or in part by the proper
13 [~~civil~~] all hazard emergency [~~preparedness~~] management
14 authorities for such purpose."

15 Section 17. Section 12-10-9 NMSA 1978 (being Laws 1959,
16 Chapter 190, Section 9, as amended) is amended to read:

17 "12-10-9. EXISTING SERVICES AND FACILITIES TO BE
18 [~~UTILIZED~~] USED BY AGENCY.--The governor, the [~~director of the~~
19 ~~technical and emergency support division of the department of~~
20 ~~public safety~~] homeland security and emergency management
21 department and the governing bodies of the political
22 subdivisions of the state are directed to [~~utilize~~] use, in
23 carrying out the provisions of the [~~State Civil~~] All Hazard
24 Emergency [~~Preparedness~~] Management Act, the services,
25 equipment, supplies and facilities of existing departments,

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1 offices and agencies of the state and [~~of the~~] its political
2 subdivisions [~~thereof~~] to the maximum extent practicable, and
3 the officers and personnel of all departments, offices and
4 agencies [~~thereof~~] of the state and its political subdivisions
5 are directed to cooperate with and extend their services and
6 facilities to the governor or to the [~~director~~] department or
7 to the local [~~coordinators~~] coordinators of [~~civil~~] all hazard
8 emergency [~~preparedness~~] management throughout the state upon
9 request."

10 Section 18. Section 12-10-10 NMSA 1978 (being Laws 1959,
11 Chapter 190, Section 10, as amended) is amended to read:

12 "12-10-10. ENFORCEMENT OF EXECUTIVE ORDERS AND
13 [~~REGULATIONS~~] RULES.--

14 A. It is the duty of all political subdivisions of
15 the state and their coordinators of the [~~civil~~] all hazard
16 emergency [~~preparedness~~] management programs appointed pursuant
17 to the provisions of the [~~State Civil~~] All Hazard Emergency
18 [~~Preparedness~~] Management Act to comply with and enforce all
19 executive orders and [~~regulations~~] rules made by the governor
20 or under [~~his~~] the governor's authority pursuant to law.

21 B. Political subdivisions shall meet all state and
22 federal requirements before becoming eligible to participate in
23 state and federal [~~civil~~] all hazard emergency [~~preparedness~~]
24 management assistance programs. They must comply with all
25 state and federal [~~regulations~~] rules and procedures and shall

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1 be removed from participation in [~~said~~] the assistance programs
2 by the state director of homeland security and emergency
3 management for failure to comply with [~~such regulations~~] the
4 rules and procedures or to maintain their eligibility in
5 accordance with prescribed requirements."

6 Section 19. Section 12-10-11 NMSA 1978 (being Laws 2002,
7 Chapter 83, Section 2) is amended to read:

8 "12-10-11. OUT-OF-STATE LICENSE HOLDERS--POWERS--
9 DUTIES.--During an emergency, a person who holds a license,
10 certificate or other permit that is issued by a state or
11 territory of the United States and that evidences the meeting
12 of qualifications for professional, mechanical or other skills
13 may be credentialed, if appropriate and approved by the
14 department of health or the homeland security and emergency
15 management department [~~of public safety~~], to render aid
16 involving those skills to meet an emergency, subject to [~~such~~]
17 limitations and conditions as the governor may prescribe by
18 executive order or otherwise. [~~Such~~] A person shall be
19 considered a public employee for the purposes of the Tort
20 Claims Act when approved to perform [~~such~~] those duties."

21 Section 20. Section 12-10-12 NMSA 1978 (being Laws 2002,
22 Chapter 83, Section 3) is amended to read:

23 "12-10-12. APPLICATION.--The provisions of Section [~~2 of~~
24 ~~this act~~] 12-10-11 NMSA 1978 apply to a person from any state
25 or territory whether or not a party to the Emergency Management

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1 Assistance Compact."

2 Section 21. Section 12-10-13 NMSA 1978 (being Laws 2002,
3 Chapter 83, Section 4) is amended to read:

4 "12-10-13. IN-STATE LICENSE HOLDERS--POWERS--DUTIES.--
5 During an emergency, a person who holds a license, certificate
6 or other permit that is issued by the state [~~of New Mexico~~] and
7 that evidences the meeting of qualifications for professional,
8 mechanical or other skills may be credentialed, if appropriate
9 and approved by the department of health or the homeland
10 security and emergency management department [~~of public~~
11 ~~safety~~], to render aid involving those skills to meet a
12 declared emergency, and shall be considered a public employee
13 for the purposes of the Tort Claims Act when approved to
14 perform [~~such~~] those duties."

15 Section 22. Section 12-10A-1 NMSA 1978 (being Laws 2003,
16 Chapter 218, Section 1) is amended to read:

17 "12-10A-1. SHORT TITLE.--~~[This act]~~ Chapter 12, Article
18 10A NMSA 1978 may be cited as the "Public Health Emergency
19 Response Act"."

20 Section 23. Section 12-10A-3 NMSA 1978 (being Laws 2003,
21 Chapter 218, Section 3) is amended to read:

22 "12-10A-3. DEFINITIONS.--As used in the Public Health
23 Emergency Response Act:

24 A. "attorney general" means the New Mexico attorney
25 general [~~for the state of New Mexico~~];

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1 B. "court" means the district court for the
2 judicial district where a public health emergency is occurring,
3 the district court for Santa Fe county or, in the event that a
4 district court cannot adequately provide services, a district
5 court designated by the New Mexico supreme court;

6 C. "director" or "state director" means the state
7 director of homeland security and emergency management or the
8 state director's designee;

9 D. "health care supplies" means medication, durable
10 medical equipment, instruments, linens or any other material
11 that the state [~~of New Mexico~~] may need to use in a public
12 health emergency, including supplies for preparedness,
13 mitigation and recovery;

14 E. "health facility" means:

15 (1) a facility licensed by the state [~~of New~~
16 ~~Mexico~~] pursuant to the provisions of the Public Health Act;

17 (2) a nonfederal facility or building, whether
18 public or private, for-profit or nonprofit, that is used,
19 operated or designed to provide health services, medical
20 treatment, nursing services, rehabilitative services or
21 preventive care;

22 (3) a federal facility, when the appropriate
23 federal entity provides its consent; or

24 (4) the following properties when they are
25 used for, or in connection with, health-related activities:

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- 1 (a) laboratories;
2 (b) research facilities;
3 (c) pharmacies;
4 (d) laundry facilities;
5 (e) health personnel training and
6 lodging facilities;
7 (f) patient, guest and health personnel
8 food service facilities; and
9 (g) offices or office buildings used by
10 persons engaged in health care professions or services;

11 F. "isolation" means the physical separation for
12 possible medical care of persons who are infected or who are
13 reasonably believed to be infected with a threatening
14 communicable disease or potential threatening communicable
15 disease from non-isolated persons, to protect against the
16 transmission of the threatening communicable disease to
17 non-isolated persons;

18 G. "public health emergency" means the occurrence
19 or imminent threat of exposure to an extremely dangerous
20 condition or a highly infectious or toxic agent, including a
21 threatening communicable disease, that poses an imminent threat
22 of substantial harm to the population of [~~the state of~~] New
23 Mexico or any portion thereof;

24 H. "public health official" means the secretary of
25 health or [~~his~~] the secretary's designee, including a qualified

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1 public individual or group or a qualified private individual or
2 group, as determined by the secretary of health;

3 I. "quarantine" means the precautionary physical
4 separation of persons who have or may have been exposed to a
5 threatening communicable disease or a potentially threatening
6 communicable disease and who do not show signs or symptoms of a
7 threatening communicable disease, from non-quarantined persons,
8 to protect against the transmission of the disease to non-
9 quarantined persons;

10 J. "secretary of health" means the secretary ~~of~~
11 ~~health~~] or ~~[his]~~ the secretary's designee;

12 K. "secretary of public safety" means the secretary
13 ~~[of public safety]~~ or ~~[his]~~ the secretary's designee; and

14 L. "threatening communicable disease" means a
15 disease that causes death or great bodily harm that passes from
16 one person to another and for which there are no means by which
17 the public can reasonably avoid the risk of contracting the
18 disease. "Threatening communicable disease" does not include
19 acquired immune deficiency syndrome or other infections caused
20 by the human immunodeficiency virus."

21 Section 24. Section 12-10A-17 NMSA 1978 (being Laws 2003,
22 Chapter 218, Section 17) is amended to read:

23 "12-10A-17. RULEMAKING.--The secretary of public safety,
24 the secretary of health, the state director and, where
25 appropriate, other affected state agencies in consultation with

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1 the ~~[secretary of health and the secretary of public safety]~~
2 secretaries and state director, shall promulgate and implement
3 rules that are reasonable and necessary to implement and
4 effectuate the Public Health Emergency Response Act."

5 Section 25. Section 12-12-17 NMSA 1978 (being Laws 1983,
6 Chapter 80, Section 1, as amended) is amended to read:

7 "12-12-17. SHORT TITLE.--~~[Chapter 74, Article 4B]~~
8 Sections 12-12-17 through 12-12-30 NMSA 1978 may be cited as
9 the "Hazardous Materials Emergency ~~[Management]~~ Response Act."

10 Section 26. Section 12-12-18 NMSA 1978 (being Laws 1983,
11 Chapter 80, Section 2) is amended to read:

12 "12-12-18. FINDINGS AND PURPOSE.--

13 A. The legislature finds that the use of hazardous
14 materials, including radioactive materials, and the
15 transportation of such materials through or within New Mexico
16 occurs on a daily basis, and, no matter how safety-conscious
17 facilities, users, shippers or carriers are, accidents may
18 occur. In the event of an accident ~~[involving hazardous~~
19 ~~materials]~~, resource requirements may be beyond the capability
20 of local governments, and the state must be prepared to respond
21 quickly and effectively to protect the health and safety of its
22 citizens and the environment.

23 ~~[B. The legislature further finds that at the~~
24 ~~present time there is no statewide hazardous materials~~
25 ~~emergency response or emergency management plan and that no~~

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1 ~~state agency is given explicit statutory authority for the~~
2 ~~management of an emergency involving radioactive materials.~~

3 G.] B. It is the purpose of the Hazardous Materials
4 Emergency [Management] Response Act to:

5 (1) provide that adequate hazardous materials
6 emergency management capability exists in the state to protect
7 the health and safety of New Mexico citizens and the
8 environment;

9 (2) delineate those state agencies that are
10 responsible for responding to [~~a hazardous materials~~] an
11 accident and providing for the control and management of such
12 an accident and to provide for the cooperation of other state
13 agencies and local governments in emergency management; and

14 (3) provide for the formulation of a
15 comprehensive hazardous materials emergency [~~management~~]
16 response plan [~~which~~] that will be distributed statewide and
17 [~~which~~] that will be complied with by all persons who may be
18 involved in responding to [~~a hazardous materials~~] an accident."

19 Section 27. Section 12-12-19 NMSA 1978 (being Laws 1983,
20 Chapter 80, Section 3, as amended by Laws 1997, Chapter 152,
21 Section 1 and also by Laws 1997, Chapter 231, Section 1) is
22 amended to read:

23 "12-12-19. DEFINITIONS.--As used in the Hazardous
24 Materials Emergency [Management] Response Act:

25 A. "accident" means an event involving hazardous

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1 materials that may cause injury to persons or damage to
2 property or release hazardous materials to the environment;

3 B. "administrator" means the hazardous materials
4 emergency response administrator;

5 C. "board" means the hazardous materials safety
6 board;

7 D. "chief" means the chief of the New Mexico state
8 police;

9 E. "commission" means the state emergency response
10 commission;

11 F. "department" means the homeland security and
12 emergency management department [~~of public safety~~];

13 G. "emergency management" means the ability to
14 prepare for, respond to, mitigate, recover and restore the
15 scene of an institutional, industrial, transportation or other
16 accident;

17 H. "first responder" means the first law
18 enforcement officer or other public service provider with a
19 radio-equipped vehicle to arrive at the scene of an accident;

20 I. "hazardous materials" means hazardous
21 substances, radioactive materials or a combination of hazardous
22 substances and radioactive materials;

23 J. "hazardous substances" means flammable solids,
24 semisolids, liquids or gases; poisons; corrosives; explosives;
25 compressed gases; reactive or toxic chemicals; irritants; or

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1 biological agents, but does not include radioactive materials;

2 K. "orphan hazardous materials" means hazardous
3 substances, radioactive materials, a combination of hazardous
4 substances and radioactive materials or substances used in the
5 manufacture of controlled substances in violation of the
6 Controlled Substances Act where an owner of the substances or
7 materials cannot be identified;

8 L. "plan" means the statewide hazardous materials
9 emergency response plan;

10 M. "radioactive materials" means any material or
11 combination of materials that spontaneously emits ionizing
12 radiation. Materials in which the estimated specific activity
13 is not greater than 0.002 microcuries per gram of material are
14 not considered to be radioactive materials unless determined to
15 be so by the hazardous and radioactive materials bureau of the
16 water and waste management division of the department of
17 environment for purposes of emergency response pursuant to the
18 Hazardous Materials Emergency [Management] Response Act;

19 N. "responsible state agency" means an agency
20 designated in Subsection D of Section [~~74-4B-5~~] 12-12-21 NMSA
21 1978 with responsibility for managing a certain type of
22 accident or performing certain functions at the scene of such
23 accident; and

24 O. "secretary" or "state director" means the
25 [~~secretary of public safety; and~~

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1 P. ~~"task force"~~ means the emergency management task
2 ~~force]~~ state director of homeland security and emergency
3 management."

4 Section 28. Section 12-12-20 NMSA 1978 (being Laws 1983,
5 Chapter 80, Section 4, as amended) is amended to read:

6 "12-12-20. STATE RESPONSIBILITY FOR MANAGEMENT OF
7 ACCIDENTS--IMMUNITY FROM LIABILITY--COOPERATIVE AGREEMENTS--
8 PRIVATE PROPERTY.--

9 A. The [~~secretary~~] state director shall have final
10 authority to administer the provisions of the Hazardous
11 Materials Emergency [~~Management~~] Response Act.

12 B. As between state and local governments, the
13 state government has the primary responsibility for the
14 management of an accident, and the local government in whose
15 jurisdiction the accident occurs shall assist the state in its
16 management of the accident.

17 C. Nothing in the Hazardous Materials Emergency
18 [~~Management~~] Response Act shall be construed as a waiver or
19 alteration of the immunity from liability granted under the
20 Tort Claims Act or as a waiver of any other immunity or
21 privilege under law.

22 D. The state, through the [~~secretary or his~~] state
23 director or state director's designee, may enter into
24 cooperative agreements with county and municipal governments
25 for the management of accidents based on the severity of the

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1 accident and the resources of the local government. The plan
2 shall set forth the criteria for determining when an accident
3 may be managed by the local government in whose jurisdiction
4 the accident occurred.

5 E. The [~~secretary~~] state director shall support
6 emergency response capabilities by assisting local and state
7 responders in the acquisition of equipment, training and
8 hazardous materials information.

9 F. The state, through the [~~secretary or his~~] state
10 director or state director's designee, may enter into
11 cooperative agreements with the federal government, Indian
12 tribes and pueblos and bordering states for assistance in the
13 management of accidents.

14 G. Whenever an accident appears imminent or has
15 occurred, employees or authorized persons of responsible state
16 agencies as defined in Section [~~74-4B-5~~] 12-12-21 NMSA 1978 are
17 authorized to enter upon any premises for the purpose of
18 determining whether it is necessary for emergency management
19 procedures to be implemented. The state on-scene coordinator
20 or a responsible state agency may take full control and custody
21 of the premises for the purpose of managing the accident."

22 Section 29. Section 12-12-21 NMSA 1978 (being Laws 1983,
23 Chapter 80, Section 5, as amended) is amended to read:

24 "12-12-21. STATE POLICE EMERGENCY RESPONSE OFFICER--
25 PROCEDURE FOR NOTIFICATION--COOPERATION OF OTHER STATE AGENCIES

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1 AND LOCAL GOVERNMENTS.--

2 A. The [~~secretary~~] state director, in addition to
3 having final authority to administer the provisions of the
4 Hazardous Materials Emergency [Management] Response Act, shall
5 be responsible for central coordination and communication in
6 the event of an accident.

7 B. The chief shall designate one or more persons to
8 be known as "state police emergency response officers". A
9 state police emergency response officer shall be trained in
10 accident evaluation and emergency response and shall be
11 available to answer an emergency response call from the first
12 responder.

13 C. In the event of an accident, if the first
14 responder is a law enforcement officer, [~~he~~] the officer shall
15 immediately notify the state police district emergency response
16 officer in [~~his~~] the officer's area, who shall in turn
17 immediately notify the state police emergency response center.
18 If the first responder is a person with radio capability tied
19 into the radio communications bureau of the information systems
20 division of the general services department, [~~he~~] the person
21 shall immediately notify Santa Fe control, who shall in turn
22 immediately notify the state police emergency response center.
23 The state police emergency response center shall:

24 (1) evaluate and determine the scope of the
25 accident based on information provided by the first responder;

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1 (2) instruct the first responder on how to
2 proceed at the accident scene;

3 (3) immediately notify the state director and
4 the appropriate responsible state agency and advise it of the
5 necessary response;

6 (4) notify the sheriff or chief of police in
7 whose jurisdiction the accident occurred; and

8 (5) coordinate field communications and summon
9 additional resources requested by the emergency management
10 team.

11 D. The responsible state agencies shall be:

12 (1) the New Mexico state police division of
13 the department of public safety [~~department~~] for coordination,
14 law enforcement and traffic and crowd control;

15 (2) the [~~environmental improvement division of~~
16 ~~the health and environment~~] department of environment for
17 assistance with accidents involving [~~radioactive or~~] hazardous
18 materials or hazardous substances;

19 (3) the state fire marshal's office for
20 assistance with any accident involving hazardous materials;

21 (4) the emergency medical services bureau of
22 the [~~health services division of the~~] department of health [~~and~~
23 ~~environment department~~] for assistance with accidents involving
24 casualties;

25 (5) the [~~emergency planning and coordination~~

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1 ~~bureau of the public safety]~~ homeland security and emergency
2 management department and the [~~military division of the~~]
3 department of military affairs for assistance with accidents
4 [~~which~~] that require the evacuation of the vicinity of the
5 accident or the use of the national guard of New Mexico; and

6 (6) the [~~state highway and~~] department of
7 transportation [~~department~~] for assistance with road closures,
8 designating alternate routes and related services.

9 E. Other state agencies and local governments shall
10 assist the responsible state agencies when requested to do so.

11 F. Any driver of a vehicle carrying hazardous
12 materials involved in an accident [~~which~~] that may cause injury
13 to persons or property or any owner, shipper or carrier of
14 hazardous materials involved in an accident who has knowledge
15 of such accident or any owner or person in charge of any
16 building, premises or facility where such an accident occurs
17 shall immediately notify the New Mexico state police division
18 of the department of public safety [~~department~~] by the quickest
19 means of communication available."

20 Section 30. Section 12-12-23 NMSA 1978 (being Laws 1984,
21 Chapter 41, Section 6, as amended) is amended to read:

22 "12-12-23. HAZARDOUS MATERIALS EMERGENCY RESPONSE
23 ADMINISTRATOR--CREATED--DUTIES.--[A.] The position of
24 "hazardous materials emergency response administrator" is
25 created within the [~~technical and emergency support division of~~

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1 ~~the public safety department~~

2 ~~B. The administrator shall, subject to the approval~~
3 ~~of the director of the technical and emergency support division~~
4 ~~of the public safety department, provide staff support to the~~
5 ~~task force and the board and shall:~~

6 ~~(1) maintain inventories and databases~~
7 ~~relevant to the task force and board activities;~~

8 ~~(2) maintain current rosters of emergency~~
9 ~~response personnel and other contact persons with knowledge,~~
10 ~~resources and capabilities for emergency response functions;~~

11 ~~(3) update the plan and accompanying documents~~
12 ~~at the direction of the task force;~~

13 ~~(4) schedule activities required by the task~~
14 ~~force and board; and~~

15 ~~(5) perform other duties requested by the task~~
16 ~~force and board in accordance with the provisions of the~~
17 ~~Emergency Management Act and the plan.~~

18 ~~G. Money appropriated to the public safety~~
19 ~~department for administering the Emergency Management Act or~~
20 ~~received through grants or other sources shall be expended upon~~
21 ~~vouchers signed by the director of the technical and emergency~~
22 ~~support division of the public safety department] homeland~~
23 ~~security and emergency management department. The state~~
24 ~~director shall assign the administrator's duties."~~

25 Section 31. Section 12-12-27 NMSA 1978 (being Laws 1983,

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1 Chapter 80, Section 10) is amended to read:

2 "12-12-27. CLEAN-UP.--Nothing in the Hazardous Materials
3 Emergency [Management] Response Act shall be construed to
4 relieve hazardous materials owners, shippers or carriers of
5 their responsibilities and liability in the event of an
6 accident. Such persons shall assist the state as requested in
7 responding to an accident and are responsible for restoring the
8 scene of the accident to the satisfaction of the state."

9 Section 32. Section 74-4E-1 NMSA 1978 (being Laws 1989,
10 Chapter 149, Section 1) is amended to read:

11 "74-4E-1. SHORT TITLE.--~~[Sections 1 through 9 of this~~
12 ~~act]~~ Chapter 74, Article 4E NMSA 1978 may be cited as the
13 "Hazardous Chemicals Information Act"."

14 Section 33. Section 74-4E-3 NMSA 1978 (being Laws 1989,
15 Chapter 149, Section 3) is amended to read:

16 "74-4E-3. DEFINITIONS.--As used in the Hazardous
17 Chemicals Information Act:

18 A. "commission" means the state emergency response
19 commission;

20 B. "department" means the ~~[public safety]~~ homeland
21 security and emergency management department;

22 C. "emergency responder" means any law enforcement
23 officer, firefighter, medical services professional or other
24 person trained and equipped to respond to hazardous chemical
25 releases;

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1 D. "hazardous chemical" means any hazardous
2 chemical, extremely hazardous substance, toxic chemical or
3 hazardous material as defined by Title ~~[HH]~~ 3;

4 E. "facility owner or operator" means any
5 individual, trust, firm, joint stock company, corporation,
6 partnership, association, state agency, municipality or county
7 having legal control or authority over buildings, equipment,
8 structures and other stationary items ~~[which]~~ that are located
9 on a single site or on contiguous or adjacent sites. For the
10 purposes of Section ~~[5 of the Hazardous Chemicals Information~~
11 ~~Act]~~ 74-4E-5 NMSA 1978, the term includes owners or operators
12 of motor vehicles, rolling stock and aircraft;

13 F. "local emergency planning committee" means any
14 local group appointed by the commission to undertake chemical
15 release contingency planning;

16 G. "release" means any spilling, leaking, pumping,
17 pouring, emitting, emptying, discharging, injecting, escaping,
18 leaching, dumping or disposing into the environment of any
19 hazardous chemical, extremely hazardous substance or toxic
20 chemical. "Release" includes the abandonment or discarding of
21 barrels, containers and other closed receptacles; and

22 H. "Title ~~[HH]~~ 3" means the federal Emergency
23 Planning and Community Right-to-Know Act of 1986."

24 Section 34. Section 74-4E-4 NMSA 1978 (being Laws 1989,
25 Chapter 149, Section 4) is amended to read:

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1 "74-4E-4. COMMISSION CREATED--MEMBERSHIP--TERMS--DUTIES--
2 IMMUNITY GRANTED.--

3 A. The "state emergency response commission" is
4 created. The commission shall consist of seven members who
5 shall be qualified voters of the state of New Mexico. All
6 members shall be appointed by the governor. Among the members
7 appointed, there shall be representatives of private industry,
8 federal facilities, public health and public safety.
9 Appointments shall be made for four-year terms to expire on
10 January 1 of the appropriate year. Commission members shall
11 serve staggered terms as determined by the governor at the time
12 of their initial appointments. Annually, the governor shall
13 designate, from among the members, a [~~chairman~~] chair of the
14 commission.

- 15 B. The commission shall:
- 16 (1) exercise supervisory authority to
17 implement Title [~~HH~~] 3 within New Mexico;
 - 18 (2) prescribe all reporting forms required by
19 the Hazardous Chemicals Information Act;
 - 20 (3) provide direction to the [~~emergency~~
21 ~~management task force and the~~] hazardous materials safety
22 board;
 - 23 (4) report periodically to the radioactive and
24 hazardous materials committee; and
 - 25 (5) report annually to the governor and the

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1 legislature.

2 C. The commission may solicit and accept grants
3 from federal or private sources for undertakings that further
4 the purpose of the Hazardous Chemicals Information Act [~~or the~~
5 ~~Emergency Management Act~~] and may make contracts necessary to
6 carry out the [~~purposes of both of those acts~~] purpose of that
7 act.

8 D. Commission members shall not vote by proxy. A
9 majority of the members constitute a quorum for the conduct of
10 business.

11 E. Commission members shall not be paid, but shall
12 receive per diem and mileage expenses as provided in the Per
13 Diem and Mileage Act.

14 F. Immunity from tort liability for emergency
15 response actions, including planning or preparation [~~therefore~~]
16 therefor, is granted to the state, its subdivisions and all
17 their agencies, officers, agents and employees. Any waiver of
18 immunity from tort liability granted under the Tort Claims Act
19 shall not be applicable to disaster or emergency response or
20 planning."

21 Section 35. TEMPORARY PROVISION--TRANSFER OF PERSONNEL
22 AND PROPERTY--CONTRACTUAL OBLIGATIONS--STATUTORY REFERENCES.--

23 A. On the effective date of this act, all
24 functions, personnel, money, appropriations, records,
25 furniture, equipment and other property of the office of

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1 homeland security or the homeland security advisor of the
2 governor's office are transferred to the homeland security and
3 emergency management department.

4 B. On the effective date of this act, all
5 functions, personnel, money, appropriations, records,
6 furniture, equipment and other property of the office of
7 emergency management and the homeland security and emergency
8 management program of the department of public safety are
9 transferred to the homeland security and emergency management
10 department.

11 C. On the effective date of this act, contractual
12 obligations of the office of homeland security or the homeland
13 security advisor of the governor's office or of the technical
14 and emergency support division of the department of public
15 safety or the department of public safety pertaining to the
16 homeland security and emergency management program shall be
17 binding on the homeland security and emergency management
18 department.

19 D. On the effective date of this act, all
20 references in the law to the office of homeland security or the
21 homeland security advisor of the governor's office shall be
22 deemed to be references to the homeland security and emergency
23 management department.

24 E. On the effective date of this act, references in
25 law to the State Civil Emergency Preparedness Act shall be

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1 deemed to be references to the All Hazard Emergency Management
2 Act. All references in law to the Emergency Management Act
3 shall be deemed to be references to the Hazardous Materials
4 Emergency Response Act.

5 Section 36. APPROPRIATION.--Two hundred fifty thousand
6 dollars (\$250,000) is appropriated from the general fund to the
7 department of finance and administration for expenditure in
8 fiscal year 2008 to establish the homeland security and
9 emergency management department. Any unexpended or
10 unencumbered balance remaining at the end of fiscal year 2008
11 shall revert to the general fund.

12 Section 37. REPEAL.--Section 12-12-22 NMSA 1978 (being
13 Laws 1983, Chapter 80, Section 6, as amended) is repealed.

14 Section 38. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2007.